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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,761	01/29/2001	Jeff A. Zimniewicz	MS160268.1	8645

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EXAMINER

YIGDALL, MICHAEL J

ART UNIT	PAPER NUMBER
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2122

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/771,761

Applicant(s)

ZIMNIEWICZ ET AL.

Examiner

Michael J. Yigdoll

Art Unit

2122

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the ^{reply}proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered ~~and an explanation of how the new or amended claims would be rejected is provided below or appended.~~

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-31.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 5.

It is noted that Applicant reiterates similar arguments to those presented in Applicant's previous response, which were subsequently addressed in the final Office action mailed on September 23, 2004.

Applicant's arguments have been fully considered but they are not persuasive.


Applicant contends that Curtis fails to disclose or suggest a validation engine operative to provide a valid order prior to the installation and/or removal of components, and contends that Curtis is silent regarding the imposition of a valid order to the installation and/or removal of components (Applicant's remarks, page 3, second paragraph). Applicant further alleges that the "check_dependency" function disclosed by Curtis does not provide an ordering of components to be methodically and systematically installed and/or removed, but rather that the "check_dependency" function generates and displays to a user a list of all dependency objects indicative of the dependent components that must be installed prior to installing the depending program (Applicant's remarks, page 3, third paragraph).

However, Applicant also acknowledges that "the check_dependency function generates ... a list ... indicative of the dependent components that must be installed prior to installing the depending program. See col. 12, lines 27-32" (Applicant's remarks, page 3, third paragraph). It should be noted that the dependent components must be installed prior to installing the program. The list of components, therefore, represents a valid order, and the "check_dependency" function is the validation engine that provides the valid order. Installation is clearly based on that valid order (see, for example, column 12, lines 32-40).

Applicant is again respectfully reminded that limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Independent claim 1, for example, merely recites "a validation engine operative to provide a valid order" and "an installer operative to control at least one of an install and removal operation of the components based on the valid order." As discussed above, the "check_dependency" function disclosed by Curtis provides a valid order, and the components are installed based on that valid order. Accordingly, the teachings of Curtis anticipate the limitations recited in the claim.

In response to Applicant's arguments regarding Curtis and Taylor (Applicant's remarks, pages 4 and 5), it should be appreciated that Curtis further discloses an installation program or setup engine for installing each of the components based on the valid order (see, for example, column 12, lines 27-40 and 51-53). Although Curtis is silent as to specifying "a first part" and "a second part" of the installation in the manner recited in independent claims 23, 24 and 31, Taylor supplements Curtis to provide such limitations (see, for example, column 2, lines 12-26 and 53-62).

MY



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